

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

v.

J.C. PENNEY CORPORATION, INC.,
ET AL.,

Defendants.

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CIVIL ACTION NO. 6:09-CV-274-LED

JURY TRIAL DEMANDED

**DEFENDANTS' PROPOSED INSTRUCTION NO. 7.5 REGARDING ENTIRE MARKET
VALUE RULE**

7.5 Entire Market Value Rule

Where a patented invention is used or sold along with other products not covered by the patent, the patent owner may not collect damages based on the value of the other products unless the patent owner can demonstrate that the patented invention is of such paramount importance that it substantially created the value of the other products. In other words, it must be shown that the patented invention is the basis for customer demand of the other products. Also, if the other products have essentially no functional relationship to the patented invention, but instead the patented invention is used only for convenience or business advantage when selling the other products, damages may not be based on the sales revenues of the other products. Other products may have a functional relationship to the patented invention if the product and patented invention are together analogous to components of a single assembly or parts of a complete machine.

For purposes of your damages calculation, you are to assume that the patented invention is used by Defendants when it sells other products, such as computers and other consumer products, that are not covered by the patents-in-suit. You may not use Defendants' product sales

revenues as your royalty base unless you believe that the use of the patented shopping cart and session ID inventions creates the demand for the products sold by Defendants, and that those inventions have a functional relationship with those products that are not covered by the patents-in-suit.

If you do not believe that the patented inventions create the demand for the products sold by Defendants and are functionally related to those products, Sovereign may still be able to recover damages, but those damages may not be based on the value of the Defendants' product sales.

Dated: November 18, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on all counsel of record via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 18, 2011.

/s/ David J. Levy
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